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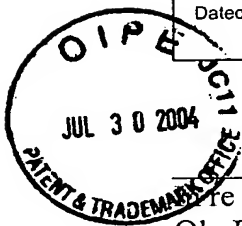
I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail, in an envelope addressed to: MS Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: July 26, 2004

Signature:

Shawn P. Foley
(Shawn P. Foley)

Docket No.:
RASMUS 9.0-001
(PATENT)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Patent Application of:
Ole-Bendt Rasmussen

Application No.: 10/787,214

Confirmation No.:

Filed: February 27, 2004

Art Unit:

For: FOOD PRODUCT WHICH ARTIFICIALLY
HAS BEEN GIVEN A CELL-LIKE
STRUCTURE BY COEXTRUSION OF
SEVERAL COMPONENTS, AND METHOD
AND APPARATUS FOR MANUFACTURING
SUCH FOOD PRODUCT

Examiner:

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION UNDER 37 C.F.R. § 1.181, AND IN THE
ALTERNATIVE, 37 C.F.R. § 1.183 OR 37 C.F.R. § 1.137(A)**

Dear Sir:

This Petition is being directed to the Office of the Deputy Director for Patent Examination Policy pursuant to MPEP §1002.02(b), paragraphs 1, 2 and 27, and MPEP §506.02 and 711.03(c).

INTRODUCTION

The captioned patent application S.N. 10/787,214 ("the '214 Application") was submitted on February 27, 2004. It was intended to be a Continuing Prosecution Application (CPA) under 37 C.F.R. § 1.53(d) of the parent application S.N. 09/926,310 ("the '310 application"), the issue fee payment for which was due on March 1, 2004. The transmittal form submitted on February 27, 2004 (copy annexed hereto as Exhibit A) was entitled "REQUEST FOR FILING A

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CONTINUATION OR DIVISION OF AN INTERNATIONAL APPLICATION” (PTO/SB/13/PCT (08-03). Paragraph 11 on page 2 thereof contained a statement that was typed in by Applicant's attorney, requesting the Patent Office to "utilize the file wrapper and contents of prior SN 09/926,310, filed 10/11/01 and is currently pending & abandoned the latter as of this fi[ling]."

In a NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION, mailed May 24, 2004, (copy annexed hereto as Exhibit B), Applicant was informed that the captioned application failed to meet one or more requirements of 37 C.F.R. § 1.53(b), and would not be entitled to a filing date of February 27, 2004, because it did not contain a specification.

Applicant hereby petitions the Director of the U.S. Patent Office to accord a filing date of February 27, 2004 to the '214 Application (and along with it, the same application number as the parent). Such relief is believed to be properly grantable either under Rule 181, or, in the alternative, under Rule 183. In the alternative, Applicant hereby petitions the Director pursuant to Rule 137(a) to revive the '310 application solely to allow Applicant to file a CPA application. In the event that the Director were to grant this alternative petition, Applicant would immediately file the CPA and then, consistent with his intention as of February 27, 2004, expressly abandon the '310 application.

Applicant respectfully submits that this petition is timely filed¹ pursuant to 37 C.F.R. § 1.181(f) and 137(e). In addition, Applicant authorizes the Director to charge the requisite fees pursuant to 37 C.F.R. § 1.17(h) and (l), to Deposit Account No. 12-1095. Further enclosed are Declarations by Applicant, Ole-Bendt Rasmussen, and by William J. Daniel, Esq., the attorney

¹Since the two-month response date for the NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION, mailed May 24, falls on a Saturday, this submission is believed to be timely under Rule 181 (f). See also, ¶4 of the Daniel Declaration, which indicates that Mr. Daniel only became aware of the problem when he received the NOTICE. Regarding Rule 137(e), Applicant has not yet received a Notice of Abandonment in connection with the '310 application.

who submitted the '214 Application, Powers of Attorney authorizing the undersigned to act on Applicant's behalf in connection with both the '214 and the '310 applications, a completed form PTO/SB/61 ("PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVIDABLY UNDER 37 CFR 1.137(a)"), and an executed copy of the NOTICE OF ALLOWANCE AND FEE(S) DUE, in connection with the '310 application, authorizing the Director to charge Deposit Account No. 12-1095 in the amount of the issue fee.

STATEMENT OF FACTS

Application No. 09/926,310 ("the '310 application") was the national stage of PCT EP 00/03713, ("the PCT application") filed April 13, 2000². The PCT application was published on October 19, 2000, bearing International Publication No. WO 00/60959.

A Notice of Allowability and NOTICE OF ALLOWANCE AND FEE(S) DUE in connection with the '310 application were mailed on December 1, 2003. Thus, the non-extendable date for payment of the issue fee was March 1, 2004. On February 12, 2004, Applicant's attorney, William J. Daniel (Reg. No. 16,585), submitted an amendment pursuant to 37 C.F.R. § 1.312 (Rule 312). On February 24, the Examiner informed Mr. Daniel that she decided not to enter the amendment. On February 27, 2004, the '214 application was submitted. Mr. Daniel intended the '214 Application to be a CPA of the '310 application pursuant to Rule 53(d). Daniels Decl., ¶3. Since the '310 application was a national stage entry of a PCT application filed on or before May 29, 2000, a CPA was proper pursuant to Rule 53(d)(i)(C). The transmittal form that Mr. Daniel used for to effect such filing (Exh. A) was entitled "REQUEST FOR FILING A CONTINUATION OR DIVISION OF AN INTERNATIONAL APPLICATION" (PTO/SB/13/PCT (08-03)). As discussed below, the first paragraph of the form contained a preprinted paragraph referring to 37 CFR 1.53(b). Paragraph 11 on page 2 thereof

² The national stage entry date under 35 U.S.C. 371(c) was October 11, 2001. The PCT Application claims priority from GB Application Nos. 9908444.4, filed April 13, 1999, and 9912565.0, filed May 28, 1999.

contained a statement that was typed in by Applicant's attorney, requesting the Patent Office to "utilize the file wrapper and contents of prior SN 09/926/310, filed 10/11/01 and is currently pending & abandoned the latter as of this fi[ling]."

The NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION (Exh. B) was mailed on May 24, 2004, in connection with the '214 application. It indicated that the '214 Application failed to meet one or more requirements of Rule 53(b), because the specification was missing from the original submission of February 27, 2004, and as a consequence, the '214 application would be granted a filing date corresponding to the date on which the Office received said specification.

ARGUMENT

The Patent Office has already determined that the '310 application contained a patentable invention. Applicant, through Mr. Daniel, allowed that application to go abandoned conditioned on his understanding and belief that the '214 application would receive the filing date of February 27, 2004, and that prosecution could be continued through the '214 application. If the '214 application is not granted a filing date of February 27, 2004, co-pendency with the '310 application is severed, and Applicant's published PCT application becomes prior art to the '214 application under 35 U.S.C. § 102(b). Basically, Applicant will have lost his patent rights.

Mr. Daniel intended to file the '214 application as a Rule 53(d) CPA. Daniel Decl. ¶¶3-4. Ideally, he should have used the form suggested by the Office to effect this filing. Instead, he mistakenly used a transmittal form intended for a different purpose. Daniel Decl. ¶3. The preprinted form included a statement that "This is a request for filing a [] continuation [] divisional application under 37 CFR 1.53(b)" (Exh. A, first page). Mr. Daniel edited the form as actually submitted to contain other indications required by Rule 53(d) (Exh. A, second page, ¶11), but did not change the preprinted statement to read "53(d)" instead of "53(b)".

Despite the confusion caused by this error, it is believed that the resulting transmittal form as actually submitted (Exh. A), when taken as a whole, met the requirements of Rule 53(d) and reflected Mr. Daniel's intent to file the '214 application as a CPA.

Rule 53(d)(1)(i)(C) is clearly met; the prior ('310) application was a national stage of an international application filed before May 29, 2000, and was in compliance with 35 U.S.C. 371. The transmittal form met the requirements of Rule 53(d)(1)(ii)(A) in that it was filed before abandonment of the '310 Application (the issue fee was due March 1, 2004).

The transmittal form identified the prior application, i.e., the '310 application; it included a request for the '214 application to utilize the file jacket and contents of the '310 application; and it requested the abandonment of the '310 application as of the filing date. Thus, the requirements set forth in Rule 53(d)(2)(i)-(v), are also satisfied. As to identity of inventorship with the prior application (Rule 53(d)(2)(iii)), a declaration copy was referred to in the transmittal form (Exh. A, ¶8); the declaration (copy annexed hereto as Exhibit C) identified the same sole inventor (Mr. Rasmussen) as named in the prior ('310) application. The transmittal form indicates that a check in the amount of \$1,042.00 was enclosed, and further authorized the Director to charge fees due to a deposit account (Exh. A, ¶3). Thus, the requirement of Rule 53(d)(3) is also satisfied.

Again, Applicant acknowledges, and apologizes for, the confusion resulting from Mr. Daniel's use of an incorrect form and by the explicit reference to "37 C.F.R. 1.53(b)" in the preprinted first paragraph of the form. However, the explicit, manually-typed instruction to "utilize the file wrapper and contents" of the prior application indicated that a Rule 53(d) filing was intended; Rule 53(d) was the normal Office procedure under which the file wrapper and contents of a prior application would be used. Taken as a whole, therefore, the transmittal form

expressed a request to proceed under Rule 53(d). Further, such request was set forth in a "separate paper" as required by Rule 53(d)(2).

Applicant respectfully requests the Director to hold that the '214 Application papers as originally submitted on February 27, 2004 constituted a proper request for filing of a Continued Prosecution Application utilizing the file jacket and contents of the '310 application, as a continuation of the '310 Application, and to accord such Continued Prosecution Application a filing date of February 27, 2004.

In the alternative, if the Director finds that the '214 application papers as originally submitted did not meet one or more requirements of Rule 53(d) which is not a requirement of the statute, it is respectfully requested that the Director waive such requirement pursuant to Rule 183. Applicant respectfully submits that the facts discussed above constitute an "extraordinary situation" in which the Director should suspend or waive a requirement of the regulations so as to avoid an manifestly unjust forfeiture. Again, the Office has already determined that there is a patentable invention. Patent rights to such invention will be lost if the '214 application does not receive the February 27, 2004 filing date. Any failure to comply with the procedural rules for filing a CPA clearly occurred inadvertently, despite a good-faith effort by Mr. Daniel and Applicant to comply with such rules in a timely fashion to secure Applicant's rights by way of a continuation application filing. Any failure to meet the requirements of Rule 53(d) arose from Mr. Daniel's inadvertent use of the wrong transmittal form for the type of continuation application that he intended to file. In these circumstances, forfeiture of Applicant's patent rights would constitute a disproportionate and unduly harsh penalty, given the nature of and the honesty with which the mistake was made.

In the alternative, if the Director should hold that the '214 Application as submitted must be treated as an application filed under Rule 53(b) rather than Rule 53(d), it is respectfully

submitted that the '214 Application as submitted met the requirements for filing a continuation application pursuant to 37 C.F.R. § 1.53(b). The specification, claims and drawings were not an actual physical part of the documents submitted on February 27, 2004. Nonetheless, Applicant respectfully submits that Rule 53(b) was satisfied because the specification, claims and drawings, were in fact, present due to their incorporation by reference. If the direction in the transmittal form as submitted to "utilize the file wrapper and contents" of the '310 Application (Exh. B, ¶11) is not construed as a direction to proceed under Rule 53(d) (*supra*), the only other plausible meaning of that direction would be a direction to incorporate such papers in a newly-filed 53(b) application, *i.e.*, an incorporation by reference. There is no ambiguity as to what the content of the new application would include. Thus, the statutory requirement for a specification, claims and drawings has been met. Even if the '214 Application is treated under Rule 53(b), it should be accorded the filing date of February 27, 2004. Here again, if the Director should find that a requirement under Rule 53(b) not mandated by statute has not been complied with, such requirement should be waived in the interests of justice under Rule 183.

Finally, if none of these requests is granted, Applicant hereby requests the Director pursuant to Rule 137(a), to revive the '310 application, on the ground that his failure to pay the issue fee by March 1, 2004 was unavoidable. Applicant believed and understood that he was foregoing an issued patent at the time in order to continue prosecution without any loss of rights whatsoever. In other words, he was agreeable not to pay the issue fee and to expressly abandon the '310 application on one and only one condition -- that his patent rights were preserved. Likewise, Applicant's attorney Mr. Daniels took a course of action that he believed would be consistent with and properly serve his client's interests; he acted and made a timely submission to ensure that pendency between the '310 and '214 applications was maintained. Surely, no such action would have been taken in connection with the '310 application (*i.e.*, to direct the Office to

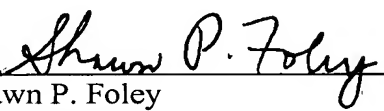
abandon the '310 application as of the filing of the '214 application) had Applicant or his attorney respectively appreciated that patent rights would have been lost or that pendency would have been severed. On the basis of these facts, Applicant submits, therefore, that abandonment of the '310 application was unavoidable.

The Declarations by Applicant and his attorney do evince an intent to continue prosecution rather than have the '310 application issue. Therefore, consistent with that intent, if the Director grants this petition and revives the '310 application, Applicant will file a CPA and immediately thereafter, expressly abandon the '310 application.

The consideration given to this submission is appreciated.

Dated: July 26, 2004

Respectfully submitted,

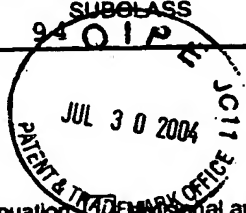
By 
Shawn P. Foley
Registration No.: 33,071
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicant

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REQUEST FOR FILING A CONTINUATION OR DIVISION OF AN INTERNATIONAL APPLICATION

DOCKET NUMBER	ANTICIPATION CLASSIFICATION OF THIS APPLICATION	PRIOR APPLICATION EXAMINER	ART UNIT
3330	CLASS 426 SUBCLASS 9401P	N. BHAT	I761

Address to:
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450



This is a request for filing a ☒ continuation ☐ divisional application under 37 CFR 1.53(b) of pending prior international application Number PCT /EP00/03713 filed on 4/13/00 entitled FOOD PRODUCT WHICH ARTIFICIALLY HAS BEEN GIVEN A CELL LIKE STRUCTURE ETC.

which designated the United States and was filed in the U.S. w/ SN09/926,310 on 10/11/01

Note: 37 CFR 1.53(d) cannot be used to file a continuation or divisional application of an international application which has not entered the national stage.

CLAIMS	(1) FOR	(2) NUMBER FILED	(3) NUMBER EXTRA	(4) RATE	(5) CALCULATIONS
TOTAL CLAIMS (37 CFR 1.16(c))		70 - 20 =	50	x \$18.00 =	\$900.00
INDEPENDENT CLAIMS (37 CFR 1.16(b))		5 - 3 =	2	x \$6.00 =	172.00
MULTIPLE DEPENDENT CLAIMS (if applicable) (37 CFR 1.16(d))				x \$----- =	
				BASIC FEE (37 CFR 1.16(a))	870.00
				Total of above Calculations =	1,842.00
				Reduction by 50% for filing small entity (Note 37 CFR 1.27)	1.27
				Total =	1,842.00

1. Enclosed are the specification, claims and drawing(s).

2. ☐ Applicant claims small entity status. See 37 CFR 1.27.

3. ☒ The Director is hereby authorized to charge any fees which may be required under 37 CFR 1.16 and 1.17, or credit any overpayment of Deposit Account No. 04-0070. A duplicate copy of this sheet is enclosed.

4. ☒ A check in the amount of \$1,842.00 is enclosed.

5. ☐ Payment by credit card. Form PTO-2038 is attached.

6. ☒ Application Data Sheet is enclosed. See 37 CFR 1.76.

7. ☒ If a CONTINUING APPLICATION, check appropriate box, and supply the requisite information below and in the first sentence of the specification following the title, or in an Application Data Sheet under 37 CFR 1.76:

☒ Continuation ☐ Divisional of prior PCT application No.: EP00/03713 filed 4/13/00
[Page 1 of 2]

This collection of information is required by 37 CFR 1.53(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

REQUEST FOR FILING A CONTINUATION OR DIVISION OF AN INTERNATIONAL APPLICATION

8. ☒ A declaration under CFR 1.63 is enclosed.

9. ☐ Priority of foreign application number _____, filed on _____
in _____ is claimed under 35 U.S.C. 119(a)-(d).

☐ The certified copy is enclosed.

10. ☒ A preliminary amendment is enclosed.

11. ☐ Also enclosed:

~~PLEASE UTILIZE THE FILE WRAPPER & CONTENTS OF PRIOR SN09/926,310,
FILED 10/11/01 and is currently pending. ABANDON THE MATTER OF THIS FI~~
Address all future correspondence to: (May only be completed by applicant, or attorney or agent or record).


WILLIAM J. DANIEL

6100 WOODLAND TERRANCE, MCLEAN, VA ~~XXXXXXXXXX~~ 22101-4225

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

2/27/2004

Date


Signature

WILLIAM J. DANIEL

Typed or printed name

~~703-536-4361~~
Telephone Number

16,585

Registration Number, if applicable

☐ Inventor(s)/Applicant(s)

☐ Assignee of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/98).

☒ Attorney or agent of record

☐ Filed under 37 CFR 1.34(a)
Registration number if acting under 37 CFR 1.34(a) _____

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
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 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/787,214	02/27/2004	Ole-Bendt Rasmussen	3330

WILLIAM J. DANIEL
 6100 WOODLAND TERRACE
 MCLEAN, VA 22101-4225

CONFIRMATION NO. 5707

FORMALITIES LETTER



OC000000012749738

Date Mailed: 05/24/2004

NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

A filing date has NOT been accorded to the above-identified application papers for the reason(s) indicated below.

All of the items noted below and a newly executed oath or declaration covering the items must be submitted within **TWO MONTHS** of the date of this Notice, unless otherwise indicated, or proceedings on the application will be terminated (37 CFR 1.53(e)). Replies should be mailed to: Mail Stop Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

The filing date will be the date of receipt of all items required below, unless otherwise indicated. Any assertions that the item(s) required below were submitted, or are not necessary for a filing date, must be by way of petition directed to the attention of the Office of Petitions accompanied by the \$130.00 petition fee (37 CFR 1.17(h)). If the petition states that the application is entitled to a filing date, a request for a refund of the petition fee may be included in the petition. Petitions should be mailed to: Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

- The specification is missing.
A complete specification as prescribed by 35 U.S.C. 112 is required.

Replies should be mailed to: Mail Stop Missing Parts
 Commissioner for Patents
 P.O. Box 1450
 Alexandria VA 22313-1450

*A copy of this notice **MUST** be returned with the reply.*

ma
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Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

DECLARATION FOR PATENT APPLICATION

Docket No. 3330

As a below named inventor, I hereby declare that:

My resident, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled FOOD PRODUCT WHICH ARTIFICIALLY HAS BEEN GIVEN A CELL-LIKE STRUCTURE BY COMBINATION OF SEVERAL COMPONENTS, AND METHOD AND APPARATUS FOR MANUFACTURING SUCH FOOD PRODUCT, the specification of which

(check one) ☐ is attached hereto.

☒ was submitted to the USPTO by the International Bureau of the PCT by notice dated October 19, 2000, as Application Serial No. PCT/EP 00/03713 and was amended on _____ (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulation, §1.56(a).

I hereby claim foreign priority benefits under Title 35, United States Code, §119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Prior International Application(s):

(Number)	(Country)	Date/Month/Year Filed	Priority Claimed
<u>PCT/EP00/03713</u>	<u>EUROPEAN PATENT OFFICE (EP)</u>	<u>13/APRIL/2000</u>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
claiming priority based on the following applications:			
<u>PO08444.4</u>	<u>GREAT BRITAIN</u>	<u>13/04/99 (13 APRIL 1999)</u>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<u>9912562.0</u>	<u>GREAT BRITAIN</u>	<u>28/05/99 (28 MAY 1999)</u>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

I hereby claim the benefit under Title 35, United States Code, §120 if any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, §1.56(a) which occurred between the filing date of the prior application and the national or PCT International filing date of this application:

NONE (Application Serial No.) (Filing Date) (Status--patented, pending, abandoned)

I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith:

WILLIAM J. DANIEL, SR., NO. 16,385
 Address all telephone calls to WILLIAM J. DANIEL at telephone no. 703-534-4341
 Address all correspondence to WILLIAM J. DANIEL
4100 WOODLAND TERRACE
MCLEAN, VA 22101

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of sole or first inventor OLE-BENDT RASMUSSEN

Ole-Bendt Rasmussen

Inventor's signature _____ Date Sept. 28, '01
 Residence Baselstrasse 12, CH-8116 Veltheim, Switzerland Citizenship Denmark
 Post Office Address Same as residence address

Full name of second inventor NONE
 Inventor's signature _____ Date _____
 Residence _____ Citizenship _____
 Post Office Address _____

Form PTO-PB-A150

(Supply similar information and signature for third and subsequent joint inventors.)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Ole-Bendt Rasmussen

Application No.: 10/787,214

Confirmation No.:

Filed: February 27, 2004

Art Unit:

For: FOOD PRODUCT WHICH ARTIFICIALLY
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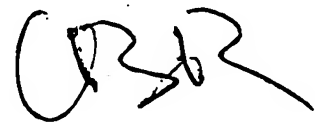
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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION OF APPLICANT OLE-BENDT RASMUSSEN

I, OLE-BENDT RASMUSSEN, do declare as follows:

1. I am the sole named inventor of United States patent application number 10/787,214 and its parent, Application No. 9/926,310.
2. My attorney, William Daniel, informed me that he received a Notice of Allowability for the '310 application. I expressed my desire to make changes to the application. Mr. Daniel explained to me that we would have to file a post-allowance amendment. On February 24, 2004, Mr. Daniel informed me that the Examiner decided not to enter the amendment. After conferring with Mr. Daniel, I ultimately agreed with his advice to re-file the application. Although I am unfamiliar with the U.S. Patent Office rules, or for that matter, the specific procedures for re-filing patent applications, I did impress upon Mr. Daniel



that in view of my present business plans, it was my desire to get an issued patent as quickly as practical. Mr. Daniel did not explain to me exactly how he intended to re-file the '310 application, nor did I review any documents that Mr. Daniel prepared for this purpose, prior to the time he filed them with the Patent Office.

3. At no time did I ever expressly state or imply to Mr. Daniel an intent to abandon the '310 application without filing a continuation application, or otherwise forfeit or surrender my patent rights, or cease my efforts in obtaining one or more patents directed to the inventions described in the '310 patent application.

I declare under penalty of perjury that the foregoing statements are true and correct.

Date: July 22, 2004


OLE-BENDT RASMUSSEN

505931_1.DOC

Docket No.:
RASMUS 9.0-001
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Ole-Bendt Rasmussen

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Examiner:

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION BY WILLIAM J. DANIEL

I, WILLIAM J. DANIEL, do declare as follows:

1. I am the attorney of record in connection with the captioned patent application, as well as the parent Application No. 09/926,310. I have been acting as patent counsel for my client, Mr. Rasmussen, the sole named inventor of the '214 application, for more than 25 years.

2. Upon receipt of the Notice of Allowability in connection with the '310 application, I conferred with Mr. Rasmussen. In view of Mr. Rasmussen's desire to make changes to the application, I advised him that a post-allowance amendment under Rule 312 would be necessary. I prepared the amendment and filed it with the Patent Office on February 12, 2004. In a telephone conference on February 24, the Examiner informed me that

she had decided to decline entry of the amendment. I then conferred further with Mr. Rasmussen and explained to him that it would be necessary to re-file the case in order to have the Examiner consider the amendments we wished to make.

3. Mr. Rasmussen agreed with my advice to re-file the '310 application. At the same time, he impressed upon me his desire to get an issued patent quickly, because he believed he would soon be involved in discussions with a potential licensee. Knowing this, it was my intention to re-file the '310 application as a Continued Prosecution Application (CPA). In the course of preparing the CPA documents, I selected the transmittal form entitled REQUEST FOR FILING A CONTINUATION OR DIVISION OF AN INTERNATIONAL APPLICATION (PTO/SB/13/PCT(08-03) (hereinafter "the transmittal form"), based on my belief at the time that it was the most appropriate because the '310 application was a national stage entry (pursuant to 35 U.S.C. §371) of Mr. Rasmussen's international application, PCT EP 00/03713. In order to tailor the transmittal form that I selected to my intent to continue prosecution by way of a CPA, I modified the transmittal form, specifically paragraph 11 on page 2, to contain the statement, "utilize the file wrapper and contents of prior SN 09/926,310, filed 10/11/01 and is currently pending & abandoned the latter as of this fi[ling]." I included this statement to meet the requirements in Rule 53(d)(2)(iv) and (v). Thus, as of February 27, 2004, when I filed the transmittal form, I believed that I had met all of the requirements necessary for a complete application filing in the way in which I intended to have it filed.

4. It was not until I received the NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION, which was mailed on May 24, 2004, that I came to appreciate that because I had not specifically identified the '214 application as a "CPA" or as an application filing under Rule 53(d), the Patent Office instead considered the application as a continuing application pursuant to Rule 53(b). Although I expressed my intention to file a CPA by inserting the above-

Application No.: 10/787,214

Docket No.: RASMUS 9.0-001


quoted statement in paragraph 11, I did not edit page 1 of the transmittal form by changing "Rule 53(b)" to "Rule 53(d)," thus making my intention unequivocally clear.

5. At no time during my representation of Mr. Rasmussen in connection with the '310 and the '214 applications, did he ever communicate to me, nor did I ever understand or believe that he intended to abandon either application or to terminate an effort to obtain one or more valid patents covering the inventions described in the '310 application. To the contrary, he repeatedly impressed upon me his desire to obtain an issued patent as soon as practical.

I declare under penalty of perjury that the foregoing statements are true and correct.

Date:

4/23/2004


WILLIAM J. DANIEL
Reg. No. 16,585

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**POWER OF ATTORNEY
and
CORRESPONDENCE ADDRESS
INDICATION FORM**

Application Number	10/787,214
Filing Date	February 27, 2004
First Named Inventor	Ole-Bendt Rasmussen
Title	FOOD PRODUCT WHICH HAS BEEN...
Art Unit	NOT YET ASSIGNED
Examiner Name	NOT YET ASSIGNED
Attorney Docket Number	RASMUS 9.0-001

I hereby appoint:

☒ Practitioners associated with the Customer Number:

000530

OR

☐ Practitioner(s) named below:

Name	Registration Number

as my/our attorney(s) or agent(s) to prosecute the application identified above, and to transact all business in the United States Patent and Trademark Office connected therewith.

Please recognize or change the correspondence address for the above-identified application to:

☒ The address associated with the above-mentioned Customer Number:

OR

☐ The address associated with Customer Number:

OR

<input type="checkbox"/> Firm or Individual Name			
Address			
Address			
City	State	Zip	
Country			
Telephone	Fax		

I am the:

☒ Applicant/Inventor.

☐ Assignee of record of the entire interest. See 37 CFR 3.71.
Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/98)

SIGNATURE of Applicant or Assignee of Record (If assignee, put name, title and company name in the "Name" space below)

Name	Ole-Bendt Rasmussen	Signature	<i>Ole-Bendt Rasmussen</i>
Date	July 22, 2004	Telephone	011-41-41-758-1677

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☒ *Total of 1 forms are submitted.

This collection of information is required by 37 CFR 1.31 and 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

July 22, 2004

Ole-Bendt Rasmussen

**POWER OF ATTORNEY
 and
 CORRESPONDENCE ADDRESS
 INDICATION FORM**

Application Number	09/926,310
Filing Date	October 11, 2001
First Named Inventor	Ole-Bendt Rasmussen
Title	FOOD PRODUCT WHICH HAS BEEN...
Art Unit	1761
Examiner Name	N. Bhat
Attorney Docket Number	RASMUS 9.0-001

I hereby appoint:

☒ Practitioners associated with the Customer Number:

000530

OR

☐ Practitioner(s) named below:

Name	Registration Number

as my/our attorney(s) or agent(s) to prosecute the application identified above, and to transact all business in the United States Patent and Trademark Office connected therewith.

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OR

☐ The address associated with Customer Number:

OR

<input type="checkbox"/> Firm or Individual Name			
Address			
Address			
City	State	Zip	
Country			
Telephone	Fax		

I am the:

☒ Applicant/Inventor.

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 Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/99)

SIGNATURE of Applicant or Assignee of Record (if assignee, put name, title and company name in the "Name" space below)

Name	Ole-Bendt Rasmussen	<i>Ole-Bendt Rasmussen</i>
Signature	<i>Ole-Bendt Rasmussen</i>	
Date	July 22, 2004	Telephone 011-41-41-758-1677

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

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July 22, 2004
Ole-Bendt Rasmussen